

### Arguments/Remarks

Claims 11-20 were pending in the application. Claims 18-20 have been withdrawn from further consideration and claims 11-17 have been amended. Therefore, upon entry of this paper, claims 11-17 will be pending.

Variable X<sup>2</sup> in independent claim 11 and dependent claim 14 has been amended to clarify the invention. Support for the amendment to claims 11-19 for the language, "or a pharmaceutically acceptable salt thereof," can be found, at least, on page 8, line 17, through page 9, line 4, of the originally filed specification. Support for the amendment to claims 16-17 for the language, "and a pharmaceutically acceptable carrier or diluent," can be found, at least, on page 25, line 26, of the originally filed specification.

The foregoing claim amendments should in no way be construed as acquiescence to any of the Examiner's objections and/or rejection, and have been made solely to expedite prosecution of the present application. Applicants reserve the option to further prosecute the same or similar claims in the present or another patent application. No new matter has been added.

#### Rejection of Claim 15 under 35 U.S.C. §112, first and second paragraphs

The Examiner has rejected claim 15 for failing to comply with the written description requirement and for being indefinite. In particular, the Examiner states, "the "anti-tussive substance" is not defined in the specification so as to know the structures of the compounds that are included and/or excluded from the term." Applicants respectfully traverse.

The term "anti-tussive" is a commonly used term in the medical arts and one of ordinary skill in the art would know the meaning of the term. According to a common medical dictionary<sup>1</sup>, the term "anti-tussive" is defined as:

Any of a large group of opioid and nonopioid drugs that act on the central and peripheral nervous systems to suppress the cough reflex. Because the cough reflex is necessary for clearing the upper respiratory tract of obstructive secretions, antitussives should not be used with a productive cough. Codeine phosphate and hydrocodone bitartrate are potent opioid antitussives. Dextromethorphan hydrobromide is an effective antitussive with no dependence liability. Antitussives are administered orally, usually in a syrup with a mucolytic or expectorant and alcohol, or, sometimes in a capsule with an antihistaminic and a mild analgesic.

Accordingly, a person of ordinary skill in the art in possession of the instant specification, *i.e.* a medical professional, could select a suitable substance because of the common usage of the term "anti-tussive."

In view of the above, Applicants respectfully request the withdrawal of the rejection of claim 15 under 35 U.S.C. §112, first and second paragraphs.

<sup>1</sup> Mosby's Medical Dictionary, 8th edition, © 2005, Elsevier.

Rejection of Claims 11-13 under 35 U.S.C. §112, second paragraph

Applicants submit that this rejection has been rendered moot in view of the amendments to claims 11-13.

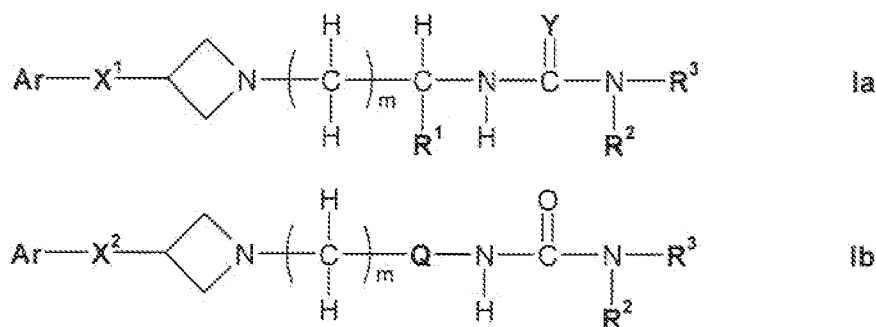
Rejection of Claims 16-17 under 35 U.S.C. §112, second paragraph

Applicants submit that this rejection has been rendered moot in view of the amendments to claims 16-17.

Rejection of Claims 11-17 under the Judicially Created Doctrine of Obviousness-Type Double Patenting

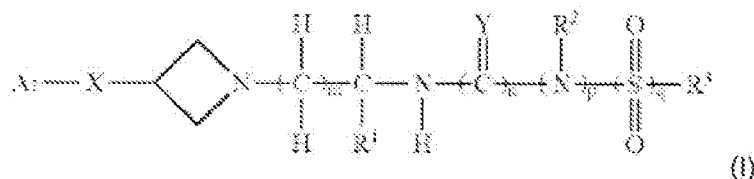
Claims 11-17 have been rejected under the judicially created doctrine of obviousness-type double patenting as allegedly being unpatentable over claims 1-7, 12-13 and 15-18 of U.S. Patent No. 7,288,537 ('537). Specifically, the Examiner is of the opinion that "[a]lthough the conflicting claims are not identical, they are not patentably distinct from each other because one of ordinary skill in the art would recognize that although the scope may be different, the same compounds are being claimed. Applicants respectfully disagree.

Claims 11-17 of the instant application, as amended, are directed to a compound of formula Ia or Ib



or its pharmaceutically acceptable salts, wherein  $\text{X}^2$  is  $-\text{S}-$ ,  $-\text{S}(=\text{O})-$  or  $-\text{S}(=\text{O})_2-$ .

In comparison, the '537 patent is directed to compounds of Formulas (I)



in free or salt form wherein  $\text{X}$  is  $-\text{C}(=\text{O})-$ ,  $-\text{O}-$ ,  $-\text{CH}_2-$ , or  $\text{CH}(\text{OH})$ .

In view of the amendments to the claims, Applicants respectfully submit that the instantly claimed genus and that of the '571 application do not overlap. Therefore, the instantly claimed sulfinyl, sulfanyl and sulfonyl compounds are non-obvious over the '537 patent.

Accordingly, we request reconsideration and withdrawal of this rejection.

Claim Objections

The Examiner's objection to claims 16 and 17 has been rendered moot by the amendment of these claims.

Conclusion

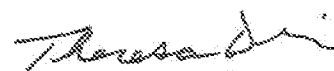
Applicants have addressed each and every issue set forth by the Examiner. Applicants respectfully submit that the present application is in good condition for allowance. Applicants have not amended the claims to cause the Examiner to perform additional searching and respectfully request consideration of the outstanding rejection and enter a Notice of Allowance.

If the Examiner believes for any reason that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at (617) 871-7802

If necessary, the Commissioner is hereby authorized in this, concurrent, and further replies, to charge payment or credit any overpayment to Deposit Account No. 50-4409 for any additional fees under 37 C.F.R. §1.16 or under 37 C.F.R. §1.17; particularly extension of time fees.

Respectfully submitted,

Novartis Institutes for Biomedical Research, Inc.  
NIBR Patents  
220 Massachusetts Avenue  
Cambridge, MA 02139  
(617) 871-7802

  
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Theresa Devlin  
Registration No.: 45,361  
Attorney for Applicant

Date: 22 October 2009